

PRINCE DEON SHOTWELL, JR.,	)	No. C 10-01274 JF (PR)
	)	
Plaintiff,	)	ORDER DISMISSING DEFENDANT J.
	)	CHUDY; DIRECTING CLERK TO
vs.	)	REISSUE SUMMONS FOR
	)	DEFENDANT S. MUSGROVE
	)	
C. NOLLS, et al.,	)	
	)	
Defendants.	)	
	)	

Plaintiff, a prisoner currently incarcerated at the California State Prison in Corcoran, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility (“CTF”) in Soledad for allegedly unconstitutional acts. The Court ordered service of Plaintiff’s amended complaint upon the named defendants. (See Docket No. 17.) The summons for Defendants J. Chudy and S. Musgrove were returned unexecuted on March 14, 2011, with the following remark: “Subject is no longer at the facility. The facility will not accept service.” (Docket Nos. 22 & 23.) On April 22, 2011, Plaintiff was directed to provide the Court with accurate current locations for Defendants Chudy and Musgrove within thirty days of the order to enable the Marshal to effect service. (Docket No. 28.)

1 Plaintiff was advised that failure to do so would result in the dismissal of his claims  
 2 against these defendants without prejudice pursuant to Rule 4(m) of the Federal Rules of  
 3 Civil Procedure. (Id. at 2.)

4 On May 20, 2011, Plaintiff filed a response to the Court order, providing a new  
 5 location for Defendant Musgrove at "SATF/State Prison." (Docket No. 30.) However,  
 6 Plaintiff provides no new information with respect to Defendant Chudy, restating that this  
 7 defendant's last location was CTF-Soledad, from which the initial summons was returned  
 8 unexecuted. (See Docket No. 22.) Accordingly, the claims against Defendant Chudy  
 9 must be dismissed without prejudice pursuant to Rule 4(m).

### 11 CONCLUSION

12 For the reasons stated above, the Court orders as follows:

13 1. All claims against Defendant J. Chudy are DISMISSED without prejudice  
 14 pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. The Clerk shall terminate  
 15 this defendant from this action.

16 2. The Clerk of the Court shall reissue summons and the United States  
 17 Marshal shall serve, without prepayment of fees, a copy of the complaint in this matter,  
 18 all attachments thereto, a copy of the Court Order filed March 7, 2011, (Docket No. 17),  
 19 and a copy of this order upon **Defendant S. Musgrove at the SATF/State Prison (P.O.**  
 20 **Box 7100, Corcoran, CA 93212 on "G" Yard Facility).** The Clerk shall also mail a  
 21 courtesy copy of this order to the California Attorney General's Office.

22 3. Defendant shall file a motion for summary judgment or other dispositive  
 23 motion with respect to the claims in the complaint found to be cognizable, and briefing  
 24 shall proceed thereafter, in accordance with the schedule and instructions set forth in the  
 25 Court's Order of Service, filed March 7, 2011, (Docket No. 17).

26 IT IS SO ORDERED.

27 DATED: 6/8/11

  
 JEREMY FOGEL  
 United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PRINCE D SHOTWELL, JR.,  
Plaintiff,

Case Number: CV10-01274 JF

**CERTIFICATE OF SERVICE**

v.

C NOLLS, et al.,  
Defendants.

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 6/17/11, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Prince Deon Shotwell H-05927  
CA State Prison-Avenal  
P.O. BOX 900  
550 Yard 3  
1 King Way  
Avenal, CA 93204

Dated: 6/17/11

Richard W. Wieking, Clerk